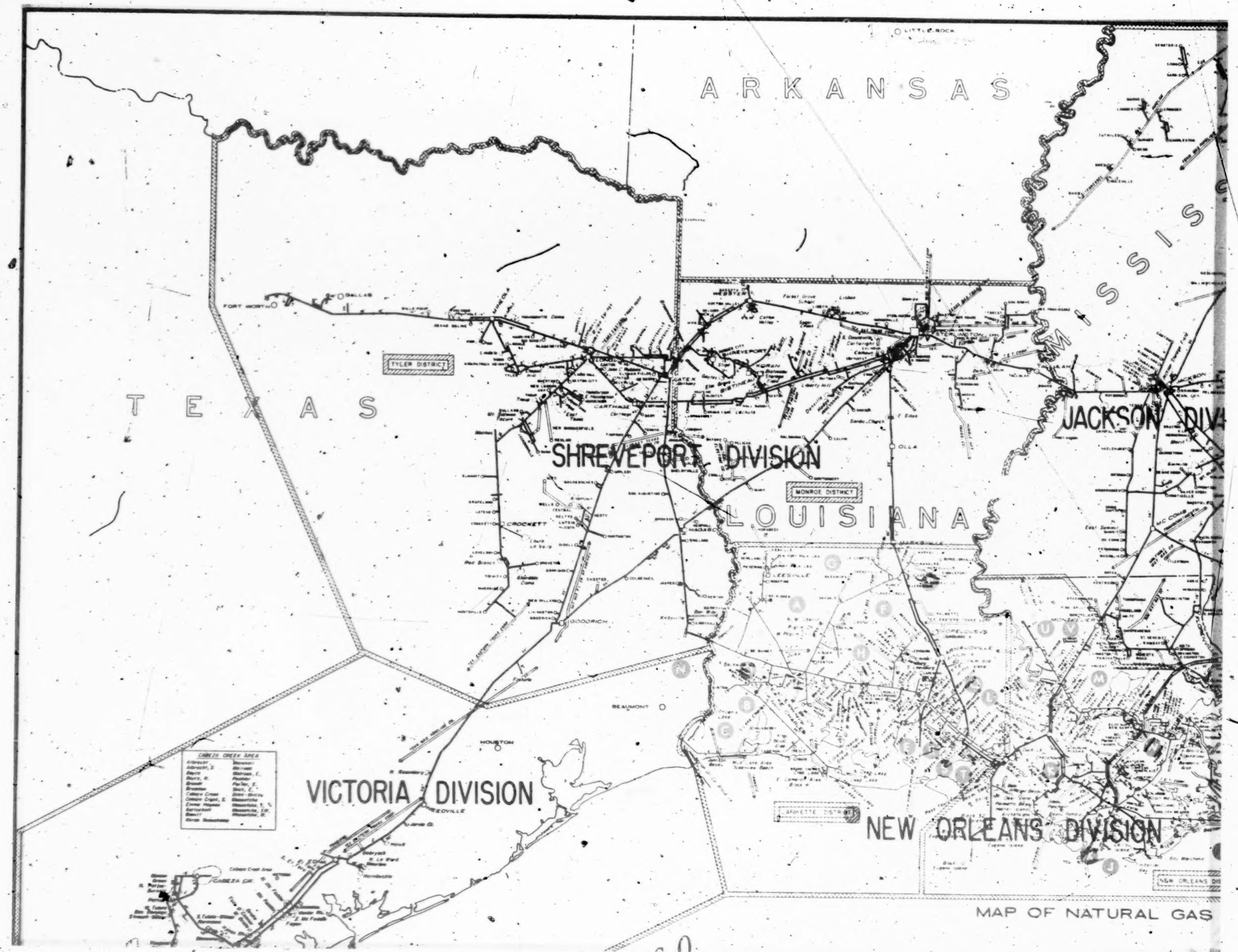
ARKANSAS
LITTLE ROCK
DALLAS
FORT WORTH
TEXAS
TYLER DISTRICT
SHREVEPORT DIVISION
MONROE DISTRICT
LOUISIANA
JACKSON DIVI
CROCKETT
GOODRICH
BEAUMONT
HOUSTON
VICTORIA DIVISION
CABEZA CREEK AREA
LAFAYETTE DISTRICT
NEW ORLEANS DIVISION
MAP OF NATURAL GAS

FPC DOCKET No. CP 71-
EXHIBT F

EXHIBIT A

ARKANSAS

MISSISSIPPI

ALABAMA

LOUISIANA

SHREVEPORT DIVISION

JACKSON DIVISION

NEW ORLEANS DIVISION

MONROE DISTRICT

LAFAYETTE DISTRICT

NEW ORLEANS DISTRICT

LITTLE ROCK

STERLINGTON

SHREVEPORT

KORAN

CARTHAGE

CROCKETT

GOODRICH

OLLA

BEAUMONT

MERIDIAN

MONTGOMERY

MOBILE

MAP OF NATURAL GAS PROPERTIES OWNED AND OPERATED

BY

FPC DOCKET No. CP 71-
EXHIBIT F

EXHIBIT A

ARKANSAS

MISSISSIPPI

ALABAMA

SHREVEPORT DIVISION

JACKSON DIVISION

LOUISIANA

FLA.

SION

NEW ORLEANS DIVISION

MAP OF NATURAL GAS PROPERTIES OWNED AND OPERATED

BY

GULF OF MEXICO
MAP OF NATURAL GAS
UNITED GAS
JURISD

NEW ORLEANS DISTRICT

EXICO

MAP OF NATURAL GAS PROPERTIES OWNED AND OPERATED BY

UNITED GAS PIPE LINE COMPANY

SHOWING

JURISDICTIONAL STATUS

LEGEND

PIPE LINES OWNED BY UNITED GAS
PIPE LINES OWNED BY OTHERS
MAIN LINE INTERCONNECTION WITH OTHER COMPANY

COMMUNITIES SERVED
MAJOR INDUSTRIAL DELIVERY
GOVERNMENT INSTALLATION
COMPRESSOR STATION
GASOLINE EXTRACTION PLANT
FIELDS SUPPLYING PIPE LINES
PROPANE AIR-PEAK SHAVING PLANT
DISTRICT BOUNDARIES
DISTRICT AND DIVISION BOUNDARIES

GRAPHIC SCALE

25 0 25 50 75 100

MILES

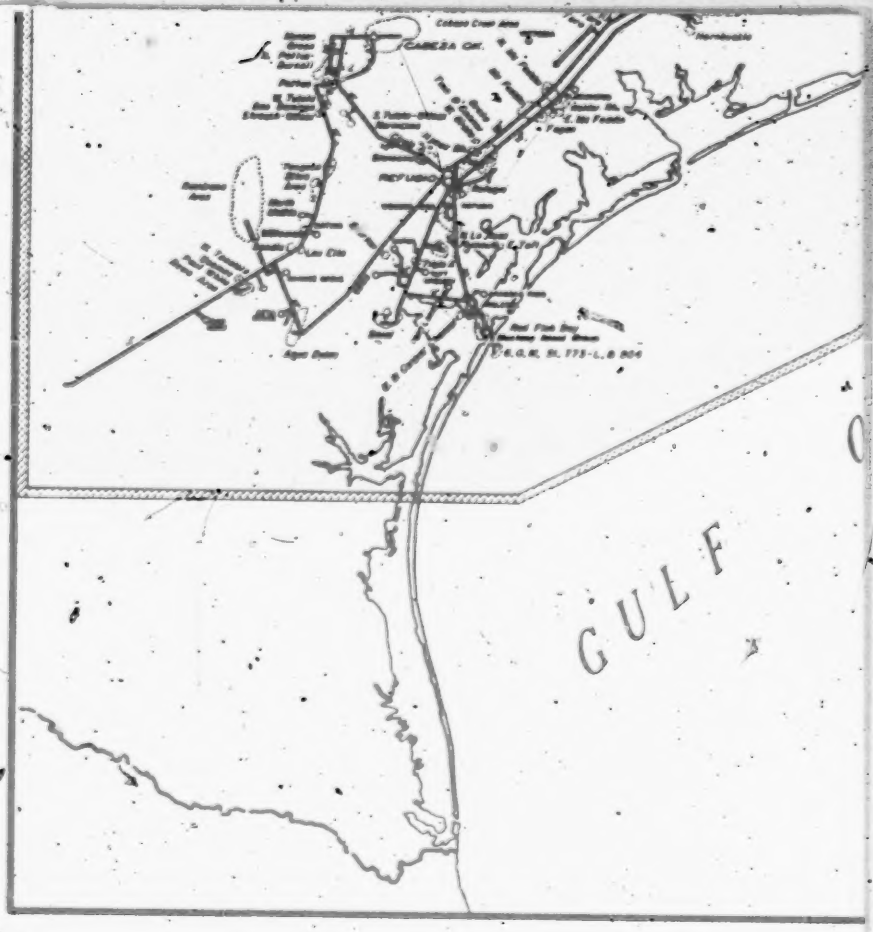
GULF

EXHIBIT B

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Opinion No. 610-A

Docket No. CP71-89

UNITED GAS PIPE LINE COMPANY

OPINION AND ORDER DENYING APPLICATIONS FOR REHEARING, PETITION FOR AN INVESTIGATION AND MOTION FOR STAY

Issued: April 7, 1972

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman; John A. Carver, Jr., Albert B. Brooke, Jr., Pinkney Walker, and Rush Moody, Jr.

Opinion No. 610-A

Docket No. CP71-89

UNITED GAS PIPE LINE COMPANY

OPINION AND ORDER DENYING APPLICATIONS FOR REHEARING, PETITION FOR AN INVESTIGATION AND MOTION FOR STAY

(Issued April 7, 1972)

NASSIKAS, Chairman:

1. A number of parties [1] have filed applications for rehearing of the Commission's Opinion No. 610 and order, issued February 9, 1972, wherein we found that this Commission has jurisdiction under the Natural Gas Act over the facilities, transportation and sales for resale of natural gas by United Gas Pipe Line Company (United) by means of and from its interstate facilities within United's Victoria and New Orleans Divisions in the States of Texas and Louisiana, respectively.

[1] New Orleans Public Service Inc. and the City of New Orleans (jointly), Texas Gulf Sulphur Company, Boise Southern Company, Texas Gas Transmission Corporation, Louisiana Gas Service Company, Louisiana Power and Light Company, Gulf States Utilities Company, Cities Service Oil Company, Shell Oil Company, Humble Oil & Refining Company, Texaco Inc., and State of Louisiana, Louisiana Municipal Association, Parish of Cameron and Louisiana Public Service Commission (jointly).

2. Additionally, the State of Louisiana and the Louisiana Public Service Commission request an investigation of alleged violations of "the Natural Gas Act and of Gas Reserves" and move to stay Opinion No. 610 and the remanded proceedings.

3. The applications for rehearing challenge the Commission's assertion of jurisdiction on various grounds, all of which have been considered and treated by the Commission in Opinion No. 610. We do not believe that further discussion is necessary. There have been certain allegations of erroneous factual conclusions, however, to which further comment would be appropriate.

4. Several parties, whose arguments are directed to the Green System-East, contend the Commission erroneously concluded that gas from the Green System-East leaves the State of Louisiana. They argue that there is nothing in the record to show that gas actually flows out of the state and that annual flow diagrams filed as a part of FPC Form 2 actually show flows at point "U" going to Baton Rouge. At paragraphs 37 and 38 of the Opinion, we stated that gas from the Green System-East enters the Green System-West, flows into the interstate pipeline of the Mid-Louisiana Gas Company at point "U" and thereafter appears to flow out of the state. In noting the flows of gas into Mid-Louisiana Gas Company's interstate pipeline it was not our purpose to trace the flows of particular molecules of gas to any given point, but merely to recognize that gas originating in the Green System-East is ultimately commingled with interstate flows.

5. Texaco Inc., asserts that there is an error in paragraph 25 of the Opinion wherein the Commission described gas flows from the De Large Field. It contends that the Commission erred in concluding that gas entered the Green System-East from the De Large Field. The Commission does not so state in paragraph 25, nor is such a conclusion intended. Despite the fact that the

De Large field gas does not enter the Green System-East, interstate gas including deliveries from the De Large Field is used to serve the Dulac area. Texaco Inc. also notes that the Commission's opinion omits the fact that several small isolated sections of transmission facilities in the Green System-East do not receive commingled flows. This has no bearing on the Commission's general assertion of jurisdiction over the New Orleans Division and is a matter which will be considered at the time that particular facilities are before us for certification.

6. Boise Southern Company (Boise) alleges that Opinion No. 610 contains a substantial misstatement of fact relating to those facilities by means of which it receives its gas deliveries. It notes that, contrary to the Commission's statement in paragraph 12 of the Opinion, the interconnection at point "A" has been certificated by the Commission [2] as was a 12-inch line which interconnected with Texas Eastern's 30-inch line. The only other transmission line used to serve Boise is 6.1 miles of 8-inch line. Boise argues that any assertion of jurisdiction over the 8-inch line should have been made at the time of certification in Docket No. CP67-26, and that in the absence thereof it had the right to understand that no further authorization from the Commission would be required. A review of the Commission's order in Docket No. CP67-26 indicates that certain facilities at point "A" were certificated by the Commission. This factual clarification, however, does not give substance to Boise's argument. The fact that additional facilities utilized to serve Boise were not certificated previously does not exempt United's facilities serving Boise from our assertion of jurisdiction.

7. Texas Gas Transmission Corporation's application for rehearing is directed solely to the Commission's order that deliveries by United be continued on a emergency

[2] Commission order issued on July 22, 1969, in Docket No. CP67-26 (42 FPC 157).

basis pending the conclusion of the remanded proceedings. It urges the Commission to impose interim volumetric limitations on United's customers affected by this case at the levels which correspond to the maximum takes of such customers in the past as reflected in the record. The issue of volumetric limitations upon certification is one that is to be taken up in the remanded proceedings as we believe the record evidence thereon is presently insufficient. In the interim we have provided that such deliveries shall be subject to curtailment in the same manner as United's other customers.

8. Texas Gulf Sulphur Company, which was granted late intervention by Commission order, issued March 31, 1972, asserts that the Commission was in error in not ordering United to cease further violations of the Natural Gas Act. It further contends that the Commission erred in ordering United to amend in any way its direct sales contracts or to make its direct sales subject to United's FPC Gas Tariff without the consent of its direct customers to the application of such tariff provisions or to any changes therein. Contrary to Texas Gulf Sulphur's assertion the Commission has not ordered United to amend its direct sales contracts. In authorizing United to continue its deliveries on an emergency basis we have, however, imposed certain conditions which we believe are in the public interest.

9. The State of Louisiana and the Louisiana Public Service Commission request an investigation of violations of the Natural Gas Act and of gas reserves alleging that there has been a "deliberate, extensive and wilfull violation by United of the prohibition of Section 7(c) of the Natural Gas Act against any proposed construction or extension of facilities which shall constitute the transportation or sale of natural gas subject to the jurisdiction of the FPC without first obtaining a certificate of public con-

venience and necessity authorizing such acts or operations." This allegation appears to us to be inconsistent with the position taken by these parties that the Commission does not have jurisdiction over the facilities in question. Nevertheless, in finding the New Orleans Division jurisdictional on the basis of unauthorized gas flows, we stated that the Commission's jurisdiction under the Natural Gas Act does not depend upon whether a natural gas company fulfills its obligation thereunder to obtain a certificate of public convenience and necessity. We refrained, however, from issuing a certificate of public convenience and necessity for any of the facilities, sales or services as we found that the record requires amplification. Among the matters to be addressed in the remanded proceedings would be the justification for United's initiation of flows into the New Orleans Division, as well as the requirements of the New Orleans Division for United's interstate flows. The latter would, of course, require a review of gas reserves within the New Orleans Division. Thus, we believe that the remanded proceedings will permit a resolution of these issues. Accordingly, we shall deny the State of Louisiana and the Public Service Commission's petition.

10. The State of Louisiana and the Louisiana Public Service Commission while expressing opposition to the reopening of the record, alternatively request that the record be broadened to include certain information specified in Appendix A of Special Order No. 7-71 of the Louisiana Public Service Commission, issued February 28, 1971. In the remanded proceedings the parties will have an opportunity to present evidence bearing on all issues related to certification. Requests for data may be directed to the Presiding Examiner. As for the motion for stay we do not believe that it would serve the public interest to stay our order and delay the remanded proceedings.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed in this proceeding present no facts or legal principles which would warrant any change in or modification of the Commission's Opinion No. 610 and accompanying Order except as that Opinion is clarified above.

The Commission orders:

(A) The applications for rehearing of the Commission's Opinion No. 610 and order, described herein are denied.

(B) The petition for an investigation of violations of the Natural Gas Act and gas reserves and the motion for stay filed by the State of Louisiana, Louisiana Municipal Association, Parish of Cameron and Louisiana Public Service Commission are denied.

By the Commission. Commissioner Carver dissenting filed a separate statement appended.

KENNETH F. PLUMB,
Secretary

[SEAL]

Docket No. CP71-89

UNITED GAS PIPE LINE COMPANY

(Issued April 7, 1972)

CARVER, Commissioner, *dissenting*:

My dissent to Opinion No. 610 was broadly stated as embracing a wide array of legal, policy, and procedural differences with the conclusions of the majority, but refrained from any extensive analysis of those issues because the *res judicata* question seemed so clearly dispositive of the proceeding at that time. I remain of that opinion, but feel compelled to comment briefly on two of the substantive matters raised by certain of the parties in their applications for rehearing and not satisfactorily resolved in this order.

A critical element of the jurisdictional finding is the conclusion that gas flows into *and out of* United's Green System-East and, at least on an annual basis, out of the State of Louisiana (Opinion No. 610, par. 37-38). The major producer applicants herein challenge this conclusion as not being supported by the record and erroneous in fact. My analysis, both prior to issuance of Opinion No. 610 and now, supports that position. An important principle has thus been raised and to allow the majority conclusion to go unchallenged is to acquiesce in the erosion of a fundamental concept of administrative jurisprudence.

The majority opinion concedes at various places that it has gone beyond the actual record of this proceeding to reach its conclusions about relative volumes, peak day and annual flows, etc. (e.g., see par. 34, 35, and 41, and footnotes 4 and 5). The concept of "official notice" is a useful one and resort to it is unobjectionable when the document or other factual source is clear on its face. That is not the case here; the conclusions drawn by the

majority are not self-evident from the exhibits or the noticed material themselves. In particular, any finding that gas flows *out of* the Green System-East can be derived only from an *interpretation* of flow diagrams and other technical data, involving a considerable element of expert judgment and opinion. But no witness has been presented to sponsor such an interpretation. Indeed, as to the majority conclusion (par. 38) that gas flows from the Green System-East out of Louisiana, the witness principally relied upon by the majority testified directly that all of the gas put into the Green System is consumed within the State of Louisiana (Tr. 323).

Opinion No. 610 seems clearly to rely on advice received from the Commission's technical staff as to *interpretation* of record and noticed data on a vital point. As such, the advice received is *ex parte* in character and has not been exposed to cross-examination or rebuttal. So far as the reocrd is concerned, therefore, the opinion is not supported by substantial evidence and should be set aside as not complying with the Administrative Procedure Act (Title 5, sec. 556(d), U. S. Code)[1] and its judicial antecedents.

Paragraph 4 of the present order amounts to a confession of weakness on this critical point. While purporting to paraphrase or restate the relevant paragraphs of Opinion No. 610, it actually constitutes a substantial modification of a basic point. We are now told that gas which finds its way out of the Green System-East and transits the length of Green System-West to its juncture with Mid-Louisiana (point "U") "*appears*" to flow out of the state. This is indeed a flimsy predicate for an action having the drastic consequences referred to in my original dissent. Nor is it clear how gas entering Mid-

[1] ". . . A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative and substantial evidence . . ."

Louisiana facilities at or near the Baton Rouge city gate can leave the State. As Texaco's application for rehearing states, Mid-Louisiana's line from the Monroe Field extends in a southerly direction and terminates at Baton Rouge. Its function is to carry gas across a corner of Mississippi back into Louisiana. Gas entering that line at point "U" goes only into Baton Rouge and is consumed there.

Until this proceeding at least, the *Florida Parishes* case represented a high water mark in the use of the commingling theory as a jurisdictional rationale. In its very first paragraph, Opinion No. 610 lays the foundation for the conclusion that that case is controlling here. This ignores a whole host of differences in the two situations, only one of which needs mention for present purposes. The question in *Florida Parishes* was whether intrastate sale of incidental amounts of gas taken from a transmission line which was an integral part of an interstate operation required our certification. Here, the facts are diametrically opposite: at most 3 or 4 percent of the volumes carried by an otherwise separate and distinct intrastate facility may have their origin in sources dedicated to the interstate market. To claim that a situation which was concerned with a 100 percent interstate supply source is identical or even comparable with one that is more than 96 percent intrastate is to reduce all problems and issues to the same dimensions. The public interest demands a better sense of perspective on the part of this Commission.

/s/ John A. Carver, Jr.
JOHN A. CARVER, JR.
Commissioner

EXHIBIT C

COMPARISON OF SIGNIFICANT DATES

UNITED GAS PIPE LINE CO. Docket No. CP71-89	LOUISIANA POWER & LIGHT CO. v. UNITED GAS PIPE LINE CO., *ET AL.*, Case No. 71-2550
1970	
OCTOBER 1, 1970:	
United files certificate application in Docket No. CP71-89, seeking certificate for, *inter alia*, Green System (A. 151; R. 245-246).	
OCTOBER 15, 1970:	
Commission "notices" United's application in Docket No. CP71-89 (A. 152; R. 248).	
1971	
FEBRUARY 12, 1971:	
LP&L files untimely petition to intervene in FPC Docket No. CP71-89 (A. 152; R. 248).	
	1971
	MARCH 31, 1971:
	LP&L files complaint for injunction (Civil Action No. 16, 637) against United, seeking to enjoin United from curtailing gas supply to, among others, LP&L's Nine-Mile Point generating station (A. 3-12; R. 1-16).
	APRIL 27, 1971:
	District Court issues temporary restraining order (A. 111-113; R. 181-183).
	APRIL 29, 1971:
	District Court dissolves temporary restraining order on motion of Commission and United (A. 114-116; R. 186-188).

MAY 14, 1971:

Commission sets Docket No. CP71-89 for hearing and permits LP&L to intervene in such proceeding (A. 153-154; R. 250-251).

JUNE 7, 1971:

Hearings commence in Docket No. CP71-89 (A. 154; R. 252).

JUNE 18, 1971:

Hearings conclude in Docket No. CP71-89.

JULY 30, 1971:

Final briefs filed with Commission in Docket No. CP71-89.

1972

FEBRUARY 9, 1972:

Commission issues Opinion No. 610.

MARCH 3, 1971:

Fifth Circuit (one judge) vacates District Court's judgment of dismissal and reinstates temporary restraining order (A. 117; R. 189-190).

MAY 14, 1971:

Panel of the Fifth Circuit affirms vacation of District Court's judgment of dismissal and remands case to District Court "for an expedited hearing on the jurisdictional issue and on such other preliminary issues as might properly be raised" (A. 119-121; R. 192-197).

MAY 27, 1971:

Reopened hearing commences and concludes before District Court (A. 138; R. 223).

JUNE 30, 1971:

District Court dismisses complaint (A. 266; R. 439).

1972

JANUARY 14, 1972:

Fifth Circuit Court of Appeals enters opinion and judgment.